

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

National General
Assurance Company

v.

Civil No. 08-cv-00440-JL

Freightliner of New
Hampshire, Inc.

ORDER AFTER PRELIMINARY
PRETRIAL CONFERENCE

The Preliminary Pretrial Conference was held in chambers on
April 6, 2009.

The Discovery Plan (document no. 36) is approved as
submitted, with the following changes:

- "DiBenedetto" (empty chair defense)
disclosure deadline -- **October 1, 2009**
- Summary judgment motions -- **November 15, 2009**
- Trial -- **April, 2010**

Based on the discussions between the court and
counsel/parties at the conference, the following are **stricken**
without prejudice to being reinstated on request if warranted by
the evidence:

- the plaintiff's claim for "res ipsa loquitur" (Count 8).

The theory, however, is not foreclosed to the plaintiff, if supported by the evidence, as part of Count 1 (negligence).

- the following affirmative defenses: Count 1 (subject matter jurisdiction), Count 4 (SOL), Count 11 (waiver/estoppel/laches).

In their dispositive motions, the parties shall notify the court if they have agreed as to choice of law.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: April 6, 2009

cc: Kimberly J.H. Memmesheimer, Esq.
John P. Sherman, Esq.
Susan H. Green, Esq.
Dona Feeney, Esq.